

EXHIBIT C

1
2 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3 - - - - -x

AVALON HOLDINGS CORP.,

4 No. 18-cv-7291 (VSB)

Plaintiff, (ECF Case)

5 -against-

6 GUY GENTILE and MINTBROKER INTERNATIONAL,
7 LTD.,

8 Defendants.

- - - - -x

9 Related to:

- - - - -x

10 NEW CONCEPT ENERGY, INC.,

No. 18-cv-8896 (VSB)

11 Plaintiff, (ECF Case)

12 -against-

13 GUY GENTILE and MINTBROKER
INTERNATIONAL, LTD.,

14 Defendants.

15 - - - - -x

16 Virtual Deposition

New York, New York

17 May 27, 2020

18 10:07 a.m.

19
20 VIRTUAL DEPOSITION of BRAD
21 KLAUSEGER, a Non-Party Witness in the
22 above-entitled action, held at the above
23 time and place, taken before Jennifer
24 Brennan, a Notary Public of the State of
25 New York, pursuant to Subpoena.

<p style="text-align: right;">Page 10</p> <p>1 B. Klausenger 2 sub-accounts, that's the 3365 account and 3 the sub-accounts that are UL 3811 and US 4 3812; right? 5 A I would have to -- so can you 6 state that again? 7 Q So I guess we only have trading 8 records for the account that I just 9 mentioned, the Master Account, that's 10 33 -- 11 A 3365 and the UL and US under 12 those accounts, yes. 13 Q I guess I understand from that, 14 the other accounts didn't have any 15 trading in these securities? 16 A Yes, that's correct. 17 Q And the securities are Avalon 18 and New Concept? 19 A Correct. 20 Q So then going into these 21 account statements for those relevant 22 accounts I just mentioned, if you go into 23 the folder that says, "Annual 24 statements," I'm going to now introduce 25 these documents, so that's Mint 2018-1,</p>	<p style="text-align: right;">Page 12</p> <p>1 B. Klausenger 2 in 3365? 3 A That's correct. 4 Q And then there is also an 5 account ending in 3665-F, the way that I 6 see that is if you go into the account 7 documents, the 3665 folder, if you look 8 at all the documents in there, some of 9 them are labeled 3665-F. 10 Do you see that? 11 A Yes, I do. 12 Q Could you explain the 13 difference between the 3365 and the 14 3365-F account, if there is one? 15 A So they're both Master 16 accounts. The F account is our IB UK 17 limited account. It's used to trade 18 particular products that aren't offered 19 through our IB LC entity. 20 Q And then how does that F 21 account relate to the UL and US account, 22 the long and short? 23 A It's essentially a partitioned 24 account of the Master I Broker. 25 Q So just another sub-account or</p>
<p style="text-align: right;">Page 11</p> <p>1 B. Klausenger 2 Mint 2018-UL and Mint 2018-US. So I 3 think that one of them was introduced 4 already as a Gentile exhibit and that one 5 is Exhibit 5 from the Gentile deposition, 6 which I'm going to mark now. 7 MS. TAUBER: Does everyone now 8 see there is an exhibit in the marked 9 exhibits on the exhibit share? 10 THE WITNESS: Yes. 11 Q So that is the document that is 12 Mint 2018-1 in this annual statements 13 folder and the other ones I'm marking 14 Exhibit 18, because we ended with 15 Exhibit 17 in the Gentile deposition. So 16 now we have Exhibit 5, I think we can't 17 open them all at the same time, which is 18 another reason why it's good to have the 19 other folder opened. So Exhibit 5 -- so 20 I'm looking at all of these together, 21 even though you can't do it on the 22 exhibit share. 23 So Exhibit 5 is this one, is 24 Mint 2018-1 and that is the activity 25 statement for the Master Account ending</p>	<p style="text-align: right;">Page 13</p> <p>1 B. Klausenger 2 another -- 3 A I wouldn't quite call it a 4 sub-account. It would be -- essentially 5 it's just a partition of the Master 6 Account. It's able to trade other 7 products that the IB LC cannot offer. 8 That's the best way I can put it. 9 Q So there is no stock trading in 10 that account, like regular -- 11 A There should not be any -- I do 12 not believe any stock trading should be 13 in that account for US securities. 14 Q So then if you look at the -- 15 sort of the first page of each of these 16 documents that I just marked 5 and 17 and 17 18, I believe it was, you see there is 18 like a net asset value header on the 19 first page? 20 A Yes, yes. 21 Q Sorry, it was 18 and 19. Just 22 to clarify, it was 5, 18 and 19. 23 A Yes. 24 Q So in Exhibit 5, which is the 25 Master Account --</p>

4 (Pages 10 - 13)

<p style="text-align: right;">Page 14</p> <p>1 B. Klauseger</p> <p>2 A Correct.</p> <p>3 Q -- do you see that it says the</p> <p>4 total -- I guess I'll ask it this way:</p> <p>5 If you look at the net asset value header</p> <p>6 on the first page of each document, how</p> <p>7 do those relate to one another?</p> <p>8 Like, they don't seem to add up</p> <p>9 or have the same numbers, but I know</p> <p>10 that, like we just discussed, there are</p> <p>11 two sub-accounts and a Master Account, so</p> <p>12 how does that work?</p> <p>13 A Net asset value --</p> <p>14 Q So where I'm looking is in</p> <p>15 the --</p> <p>16 A You're in Exhibit 5?</p> <p>17 Q Yeah, let me just also put one</p> <p>18 more exhibit on there. And Exhibit 5,</p> <p>19 for example, I'm looking at the total,</p> <p>20 which says -- like at the end of 2018,</p> <p>21 there is eight -- so let me just put one</p> <p>22 more exhibit up there actually.</p> <p>23 So now there is Exhibit 6 up</p> <p>24 there also from the Gentile deposition</p> <p>25 and that seems -- tell me if I'm wrong,</p>	<p style="text-align: right;">Page 16</p> <p>1 B. Klauseger</p> <p>2 document is annoying, but the short</p> <p>3 account, which is Exhibit 19, that has a</p> <p>4 total at the end of the same period of</p> <p>5 negative 710,000?</p> <p>6 A Correct.</p> <p>7 Q So how -- I guess I'm wondering</p> <p>8 how -- like, what is the relationship</p> <p>9 between the net asset value shown on the</p> <p>10 Master statement and then the two</p> <p>11 sub-account statements, in order to</p> <p>12 figure out what is the actual value of</p> <p>13 this account?</p> <p>14 Do you have to add all those</p> <p>15 numbers together or is one included in</p> <p>16 the other, like how is that --</p> <p>17 A Right, so based on what I</p> <p>18 see -- let me take another look at each</p> <p>19 of the exhibits again, if you don't mind.</p> <p>20 Q No problem. If you want to</p> <p>21 open up at the same time, if you go into</p> <p>22 the production folder, it goes through</p> <p>23 the documents that are in like the</p> <p>24 account statements folder.</p> <p>25 A I'm opening them up. Okay. So</p>
<p style="text-align: right;">Page 15</p> <p>1 B. Klauseger</p> <p>2 but this looks like another way of</p> <p>3 showing the information that's in</p> <p>4 Exhibit 5, do you see that, a different</p> <p>5 type of statement with --</p> <p>6 A Yes, I see that.</p> <p>7 Q So where I'm looking at</p> <p>8 Exhibit 6, which is more similar to the</p> <p>9 format of the other two documents, if you</p> <p>10 look at where it says, "Net asset value,"</p> <p>11 on the first page, then it says, "Total,"</p> <p>12 and I'm looking at the total, like at the</p> <p>13 end of December 31, 2018, 7.94 million</p> <p>14 number?</p> <p>15 A Correct.</p> <p>16 Q And then if you look at</p> <p>17 Exhibit 18, which is the long account, on</p> <p>18 the front page of that one, a similar</p> <p>19 like header and then --</p> <p>20 A Yes.</p> <p>21 Q -- it's total, December 31,</p> <p>22 2018, is 5.9 million.</p> <p>23 Do you see that, 5.989?</p> <p>24 A Yes.</p> <p>25 Q And then the short, I now each</p>	<p style="text-align: right;">Page 17</p> <p>1 B. Klauseger</p> <p>2 each of these -- to understand the total</p> <p>3 value of the account, Exhibit 6 is not a</p> <p>4 consolidated statement.</p> <p>5 Q Okay.</p> <p>6 A So we would have to combine</p> <p>7 each of the three accounts, to get a</p> <p>8 complete net asset under value.</p> <p>9 Q So just take the 7.94, from the</p> <p>10 Master statement, Exhibit 6 statement?</p> <p>11 A Correct.</p> <p>12 Q And subtract that number value</p> <p>13 from the --</p> <p>14 A 710,000.</p> <p>15 Q And that would give you the</p> <p>16 total amount?</p> <p>17 A Correct.</p> <p>18 Q Is that total account reflected</p> <p>19 on any statement anywhere?</p> <p>20 A It would be reflected on a</p> <p>21 consolidate statement.</p> <p>22 Q So looking at the production</p> <p>23 that Interactive produced to us, did they</p> <p>24 produce any statements like that?</p> <p>25 A The production does not appear</p>

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<p style="text-align: right;">Page 18</p> <p>1 B. Klauseger</p> <p>2 to have a consolidated statement.</p> <p>3 Q Do you know if the statement</p> <p>4 has individual trading on it?</p> <p>5 A Can you restate that?</p> <p>6 Q The -- if you look at the</p> <p>7 Master Account statement, which is</p> <p>8 Exhibit 6, that one has no, like,</p> <p>9 individual trades broken down --</p> <p>10 A Right.</p> <p>11 Q -- versus the long and short</p> <p>12 statements, that 18 and 19. There are</p> <p>13 like thousands of pages and they have in</p> <p>14 the middle of those documents, there is a</p> <p>15 section called "Trades," and there is</p> <p>16 actual executed trades, it looks like, on</p> <p>17 those statements?</p> <p>18 A So, yes, the -- a consolidated</p> <p>19 statement would have -- would consolidate</p> <p>20 each of the I Broker US and UL accounts,</p> <p>21 so that trade activity would be displayed</p> <p>22 on that consolidated statement.</p> <p>23 MS. TAUBER: Could I ask that</p> <p>24 be produced to us because that would</p> <p>25 make it a lot easier to see all of</p>	<p style="text-align: right;">Page 20</p> <p>1 B. Klauseger</p> <p>2 see AWX, which is the Avalon trading</p> <p>3 symbol mentioned is under a header on</p> <p>4 page three, that says, "Marked to Market</p> <p>5 performance summary"?</p> <p>6 A Correct.</p> <p>7 Q And it says like there is --</p> <p>8 there is sort of like -- sorry.</p> <p>9 A I didn't hear the last part. I</p> <p>10 see the AWX in the Marked to Market.</p> <p>11 Q Could you explain -- I see that</p> <p>12 says, "Position, transaction,</p> <p>13 commissions, total," how is that</p> <p>14 calculated and what is that telling us</p> <p>15 about AWX position?</p> <p>16 A So Marked to Market performance</p> <p>17 summary details the performance of the</p> <p>18 security over the life of the statement</p> <p>19 or over the period of the statement.</p> <p>20 So this would be the -- this</p> <p>21 would cover specifically over the period</p> <p>22 of 2018. And it shows that AWX invested</p> <p>23 essentially -- this customer invested</p> <p>24 \$379,486.35 into AWX and sold the</p> <p>25 position for \$5,990,033.13, paid</p>
<p style="text-align: right;">Page 19</p> <p>1 B. Klauseger</p> <p>2 the trades?</p> <p>3 Q And I guess what we have --</p> <p>4 would that statement include -- basically</p> <p>5 would that be just the sum of the US</p> <p>6 trading and the UL trading?</p> <p>7 A Correct.</p> <p>8 Q It would be just those two</p> <p>9 documents.</p> <p>10 Are there any other, like</p> <p>11 trading reports that are included on</p> <p>12 those consolidated statements, that we</p> <p>13 don't have?</p> <p>14 A No, it's essentially a</p> <p>15 combination of all three of these</p> <p>16 statements together, would be the</p> <p>17 consolidated statement.</p> <p>18 Q Okay. So I guess going into</p> <p>19 the UL and US documents a little bit in</p> <p>20 more detail, I'm just going to open the</p> <p>21 UL document, so we can look at that one</p> <p>22 together, which is the Exhibit 18.</p> <p>23 A Okay.</p> <p>24 Q So for that one, you look at</p> <p>25 the -- like the headers, the first time I</p>	<p style="text-align: right;">Page 21</p> <p>1 B. Klauseger</p> <p>2 commissions of \$9,290.55, which led to a</p> <p>3 profit of \$5,601,256.23.</p> <p>4 Q So when you say that they</p> <p>5 invested the 379,000 amount, what does it</p> <p>6 mean that it's negative in that --</p> <p>7 A That's how much they paid to</p> <p>8 open up that position.</p> <p>9 Q So what would mean like the</p> <p>10 next one over, Axon is positive?</p> <p>11 Do you see that?</p> <p>12 A Yes, I do. I believe it has to</p> <p>13 do with the accounting of the position to</p> <p>14 determine if it's a profit or loss.</p> <p>15 Q Okay. So now there is a</p> <p>16 similar line like this in the US account,</p> <p>17 if you open that document, which is</p> <p>18 Exhibit 19.</p> <p>19 A Yes.</p> <p>20 Q And that one is AWX, that one</p> <p>21 is on page four -- three, as well</p> <p>22 actually.</p> <p>23 A Okay.</p> <p>24 Q So do you see there, there is</p> <p>25 another like similar information, this</p>

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<p style="text-align: right;">Page 22</p> <p>1 B. Klausenger 2 one says 410, I guess invested and then 3 the selling price was 16; right, 4 commissions? 5 So in order to get the total 6 number of shares traded in this account, 7 this Master Account, this Omnibus 8 Account, would you just sort of literally 9 add these lines together and then -- 10 A The number of shares? 11 Q In order to get a full picture 12 of the trading in this doc, in this case 13 it would be under this Marked to Market 14 performance summary header, if you wanted 15 to see the overall Marked to Market 16 performance summary of this doc, would 17 you have to add these columns together, 18 these rows together, meaning the AWX rows 19 on Exhibit 18 and the AWX row on 20 Exhibit 19? 21 A Would you add it -- yes, I mean 22 to get the P/L, you would add the two 23 together, yes. 24 Q For each column; right? Like 25 so that would be the total -- if you</p>	<p style="text-align: right;">Page 24</p> <p>1 B. Klausenger 2 probably reached out to your programmer. 3 Q So the consolidated statement 4 is not something that's given to the 5 customer; is that right? 6 It's not something that like 7 this -- 8 A Right. Well, it may be 9 available to the customer. I'm unsure 10 of -- I know that we can generate a 11 specific statement as a consolidated 12 statement though internally. 13 Q Okay. So meaning -- but that 14 could be any two accounts that I would 15 want? If I'm a customer, I could get -- 16 in this case, could you do a consolidated 17 statement between the 3365 account, which 18 is the Master Account or any other 19 accounts? 20 A No. 21 Q It has to be the Omnibus? 22 A Yeah, within the same family of 23 accounts. 24 Q So then going into the trading 25 section of this -- of these statements,</p>
<p style="text-align: right;">Page 23</p> <p>1 B. Klausenger 2 added like the position column in the 3 long and short statements together? 4 A Yes, it should come out, which 5 would equal the same P/L. 6 Q On the consolidated statement 7 you were mentioning, would that already 8 be added or would it be in two separate 9 sections? 10 A Yes, it would net the amounts 11 together. 12 Q So is it possible for you to 13 confirm -- I mean, maybe we can just get 14 a copy of that consolidated statement, 15 but to confirm that actually does add up, 16 the two numbers added together, would be 17 the number that appeared on the 18 consolidated statement? 19 A We would have to -- yes, I 20 believe we could run a consolidated 21 statement for the two accounts -- for all 22 three accounts. Due to the vast amount 23 of trading activity, we might have some 24 difficulty with producing that document, 25 but I wouldn't know until I, you know,</p>	<p style="text-align: right;">Page 25</p> <p>1 B. Klausenger 2 so if you go to the UL statement and 3 starting on page nine -- sorry, before 4 that, going to the section that's called 5 "Realized and Unrealized performance 6 summary," which is like page 390 of this 7 document? 8 A You're on Exhibit 19 still? 9 Q I'm in Exhibit 18. 10 MR. FORD: Is there a function 11 to skip to that page because it looks 12 like otherwise I can do one page at a 13 time? 14 MS. TAUBER: I asked about that 15 and they said there wasn't. That's 16 if you open in your production, it's 17 easier. 18 MR. PROVENCIO: Are we talking 19 about the short or long account? 20 MS. TAUBER: The long account 21 first. I think they're the same 22 format, so I -- we can look at any 23 one of these and I assume it's the 24 same type of information, like we 25 discussed, we just add it altogether.</p>

7 (Pages 22 - 25)

<p style="text-align: right;">Page 26</p> <p>1 B. Klauseger</p> <p>2 So we can look at each section of one</p> <p>3 document, I assume, and then -- I'll</p> <p>4 ask that and you'll tell me, but I</p> <p>5 think that would be an example of how</p> <p>6 it works.</p> <p>7 MR. PROVENCIO: If you look at</p> <p>8 the account statements in Adobe, you</p> <p>9 can pull up the bookmarks and skip to</p> <p>10 the various sections of the</p> <p>11 statement.</p> <p>12 MS. TAUBER: Right.</p> <p>13 A You said page 290?</p> <p>14 Q Well, I'm on page 390 of the</p> <p>15 UL, Exhibit 18.</p> <p>16 A Okay, I'm there.</p> <p>17 Q Do you see there is an AWX line</p> <p>18 here and it says, like, the realized,</p> <p>19 Unrealized columns and there is total</p> <p>20 column?</p> <p>21 A Right.</p> <p>22 Q So that total column is</p> <p>23 5,605,496.92, do you see that?</p> <p>24 A Yes.</p> <p>25 Q So I'm just going to tell</p>	<p style="text-align: right;">Page 28</p> <p>1 B. Klauseger</p> <p>2 statement, versus realized Unrealized</p> <p>3 detail, the P/L, between the initial</p> <p>4 purchase price and the ultimate sale</p> <p>5 price.</p> <p>6 So Marked to Market can</p> <p>7 change -- Marked to Market can be</p> <p>8 different because of -- it all depends on</p> <p>9 when the customer established their</p> <p>10 position and it's showing the change in</p> <p>11 the period's stock price.</p> <p>12 Q Okay. So -- and the realized</p> <p>13 Unrealized, depends on what?</p> <p>14 A So realized and Unrealized</p> <p>15 essentially is when you first purchase</p> <p>16 the stock, versus when you sell the</p> <p>17 stock.</p> <p>18 Q Okay.</p> <p>19 A There is the initial purchase</p> <p>20 price you made and there is the closing</p> <p>21 position, which is another price. The</p> <p>22 difference between there, determines the</p> <p>23 realized and Unrealized.</p> <p>24 For example, if you buy</p> <p>25 something at \$10, you sell it at \$20, you</p>
<p style="text-align: right;">Page 27</p> <p>1 B. Klauseger</p> <p>2 you -- I'll represent to you on page</p> <p>3 three we just looked at, where it says</p> <p>4 "Marked to Market performance summary,"</p> <p>5 the total there for AWX was not that</p> <p>6 number. It was close -- so we looked at</p> <p>7 the --</p> <p>8 A Right.</p> <p>9 Q So it was close. There are two</p> <p>10 numbers actually in the other page,</p> <p>11 Marked to Market, there was like the</p> <p>12 amount you said the trades brought in,</p> <p>13 which was a 5.9 number and then there was</p> <p>14 like some net profit, which was the 5.6</p> <p>15 number, which I think excludes</p> <p>16 commissions?</p> <p>17 A Uh-huh.</p> <p>18 Q And then here, I don't see how</p> <p>19 these numbers sort of align with the</p> <p>20 Marked to Market performance summary</p> <p>21 numbers.</p> <p>22 Can you explain that a little</p> <p>23 bit?</p> <p>24 A So Marked to Market represents</p> <p>25 the change in P/L over the period of the</p>	<p style="text-align: right;">Page 29</p> <p>1 B. Klauseger</p> <p>2 make \$10 in profit. If you buy something</p> <p>3 at \$10 and it's valued at \$20, you have</p> <p>4 an Unrealized profit of \$10.</p> <p>5 Q Okay. So the Unrealized</p> <p>6 performance summary includes shares that</p> <p>7 weren't sold yet, is that what you're</p> <p>8 saying?</p> <p>9 A Correct.</p> <p>10 Q Then now going to the trade</p> <p>11 section there -- okay. So on --</p> <p>12 MR. FORD: I apologize to</p> <p>13 interrupt, just to clarify that last</p> <p>14 answer because I think you said that</p> <p>15 with respect to the Unrealized, I</p> <p>16 forget exactly what he said, but the</p> <p>17 Unrealized in the AWX is all zero, is</p> <p>18 what I'm looking at.</p> <p>19 THE WITNESS: Right, which</p> <p>20 means that he sold -- the customer</p> <p>21 sold the entire position.</p> <p>22 MR. FORD: Thank you.</p> <p>23 Q Why is it different from the</p> <p>24 Marked to Market?</p> <p>25 A Marked to --</p>

8 (Pages 26 - 29)

<p style="text-align: right;">Page 30</p> <p>1 B. Klauseger</p> <p>2 Q It's not vastly different, but</p> <p>3 it is different.</p> <p>4 A Because the Marked to Market is</p> <p>5 this, is that it's showing the P/L of the</p> <p>6 security at the end of the last sale -- I</p> <p>7 believe it's the last sale of the review</p> <p>8 period or the close date. So let me</p> <p>9 rephrase this.</p> <p>10 Marked to Market is going to</p> <p>11 show the change in P/L of a position</p> <p>12 based on the close price of that product.</p> <p>13 So if I, just for example, if I buy stock</p> <p>14 at 10, sell it at 20, I have a P/L of</p> <p>15 \$10. But at the end of the day, if it</p> <p>16 closes at \$22, I have a Marked to Market</p> <p>17 P/L for that day of \$12.</p> <p>18 Q Okay. So that -- so I'm still</p> <p>19 not sure why it would be different in</p> <p>20 this situation because this is like --</p> <p>21 this account scheme is up, as of</p> <p>22 December 31, 2018.</p> <p>23 So as of that day, he had sold</p> <p>24 all the shares in his account, based on</p> <p>25 the Unrealized performance summary; is</p>	<p style="text-align: right;">Page 32</p> <p>1 B. Klauseger</p> <p>2 represents how much money the customer</p> <p>3 made on these AWX trades?</p> <p>4 A It's the Realized section, so</p> <p>5 \$5,605,496.91 is what the customer made.</p> <p>6 Q Wait --</p> <p>7 A Are you on Exhibit 18?</p> <p>8 Q Yes. The 5,605,496.91; right?</p> <p>9 A Yes.</p> <p>10 Q So okay, that's the proceeds</p> <p>11 minus the commissions; is that right?</p> <p>12 A Proceeds minus commissions,</p> <p>13 minus cost.</p> <p>14 Q Minus basis?</p> <p>15 A Yes.</p> <p>16 Q Then where it says quantity, it</p> <p>17 says 4,396 under the quantity total?</p> <p>18 A Yes.</p> <p>19 Q Does that mean there is 4,396</p> <p>20 shares of AWX in his account?</p> <p>21 A Let's see. It means it</p> <p>22 purchased 4,396 more shares than he sold,</p> <p>23 as detailed above.</p> <p>24 Q So I think I know what happened</p> <p>25 to those shares and I think if you go</p>
<p style="text-align: right;">Page 31</p> <p>1 B. Klauseger</p> <p>2 that right?</p> <p>3 A Yes, the trade section will be</p> <p>4 a better indicator of when he sold it.</p> <p>5 Q Let's move to the trade</p> <p>6 section. I believe that's more direct UL</p> <p>7 than anything. If we go to page 933 of</p> <p>8 the ULs of Exhibit 18 --</p> <p>9 A Okay.</p> <p>10 Q -- that's where the AWX trading</p> <p>11 begins and then it ends at page 999.</p> <p>12 A Okay.</p> <p>13 Q And so on that page, we have</p> <p>14 this summary, this line that summarizes</p> <p>15 total AWX?</p> <p>16 A Yes.</p> <p>17 Q There you have the realized P/L</p> <p>18 and the Marked to Market P/L, you can see</p> <p>19 they're a little bit different; right?</p> <p>20 A Right.</p> <p>21 Q So -- and then there is the</p> <p>22 commissions, the proceeds.</p> <p>23 So which one of these numbers,</p> <p>24 like the proceeds, the Realized P/L or</p> <p>25 the Marked to Market P/L, most accurately</p>	<p style="text-align: right;">Page 33</p> <p>1 B. Klauseger</p> <p>2 into the transfer section of this</p> <p>3 document --</p> <p>4 A Okay.</p> <p>5 Q -- there is a transfer of that</p> <p>6 amount of shares from the -- I think it's</p> <p>7 the long and short account?</p> <p>8 A Do you have a page for that?</p> <p>9 Q Yes, hold on. I have to open</p> <p>10 it up. I don't know what happened to</p> <p>11 that page, one second.</p> <p>12 So it's going to be on 4,758 of</p> <p>13 the Exhibit 18.</p> <p>14 MR. FORD: 4,758?</p> <p>15 MS. TAUBER: Yes, page 4,758 of</p> <p>16 Exhibit 18.</p> <p>17 MR. FORD: Danielle, do you see</p> <p>18 the AWX on that page?</p> <p>19 MS. TAUBER: Sorry, it's 4,759,</p> <p>20 the very next page.</p> <p>21 MR. FORD: There it is. Thank</p> <p>22 you.</p> <p>23 Q So --</p> <p>24 A 47 -- okay, all right, yes. I</p> <p>25 see there are four internal transfers of</p>

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<p style="text-align: right;">Page 34</p> <p>1 B. Klauseger</p> <p>2 AWX.</p> <p>3 Q Right. I think those add up to</p> <p>4 the number that we were just looking at,</p> <p>5 which is the 4,396, the quantity in the</p> <p>6 trades?</p> <p>7 A Uh-huh.</p> <p>8 Q So it looks to me that the</p> <p>9 quantity, that that quantity of shares</p> <p>10 was transferred from the UL account to</p> <p>11 the US account?</p> <p>12 A Yes.</p> <p>13 Q Okay. So that would explain --</p> <p>14 A Why we see the number of shares</p> <p>15 that's -- that's why we see the higher</p> <p>16 number of purchase shares, than sold</p> <p>17 shares, in the trade section.</p> <p>18 Q Okay. And then so in terms of</p> <p>19 the trades going back to -- I'm sorry to</p> <p>20 jump to these other pages.</p> <p>21 Going back to the trading</p> <p>22 section, if you just talk generally about</p> <p>23 what these different columns indicate, if</p> <p>24 you look at, like, for example, page 934</p> <p>25 of this UL, Exhibit 18 document, which is</p>	<p style="text-align: right;">Page 36</p> <p>1 B. Klauseger</p> <p>2 page 935 or -- yeah, 35, where it says --</p> <p>3 like it says 300 shares, do you see that?</p> <p>4 A Yes.</p> <p>5 Q So actually go down to the</p> <p>6 third line, where it says 975 shares.</p> <p>7 A Okay.</p> <p>8 Q And it says P under code, so if</p> <p>9 P is a partial fill, is 975 the number of</p> <p>10 shares that were filled or the number of</p> <p>11 shares that were ordered?</p> <p>12 A It's the number of shares that</p> <p>13 were filled.</p> <p>14 Q Okay.</p> <p>15 A So if to explain what the</p> <p>16 partial fill indicates, is that the</p> <p>17 customer entered an order for 975 or more</p> <p>18 shares and it received an execution of</p> <p>19 975 shares across multiple executions</p> <p>20 multiple fills at various prices.</p> <p>21 Q Can you say the first thing --</p> <p>22 A The order is for at least 975</p> <p>23 shares and it means that the -- that an</p> <p>24 order came in for at least 975 shares to</p> <p>25 get executed and received multiple</p>
<p style="text-align: right;">Page 35</p> <p>1 B. Klauseger</p> <p>2 a random page of AWX trading?</p> <p>3 A Yes.</p> <p>4 Q So -- okay, so there is this</p> <p>5 transaction, this code at the end on the</p> <p>6 last column on the right?</p> <p>7 A Yes.</p> <p>8 Q So there is like O, P, C, P?</p> <p>9 A Yes.</p> <p>10 Q And those transaction codes are</p> <p>11 explained at the end of this document?</p> <p>12 A Correct.</p> <p>13 Q And so C, I think is a closing</p> <p>14 trade; right?</p> <p>15 A Correct.</p> <p>16 Q And then O is an opening trade?</p> <p>17 A Correct.</p> <p>18 Q I don't know what the P means,</p> <p>19 off the top of my head.</p> <p>20 A P is a partial fill.</p> <p>21 Q Okay. So my question about the</p> <p>22 partial fill ones, is the number that we</p> <p>23 see here, as the number of shares that</p> <p>24 are traded, like for example, if you look</p> <p>25 at, for example, like the first line on</p>	<p style="text-align: right;">Page 37</p> <p>1 B. Klauseger</p> <p>2 executions.</p> <p>3 So it may, for instance, it may</p> <p>4 receive 100 share execution on exchange</p> <p>5 one and may receive 200 execution on</p> <p>6 exchange two and then receive 675</p> <p>7 execution on exchange three, totaling 975</p> <p>8 shares. Each of those executions can be</p> <p>9 executed at various prices, which is the</p> <p>10 volume weighted average price as shown in</p> <p>11 the trade price section, which that</p> <p>12 253,871.79.</p> <p>13 Q Okay. So the next line 2,785,</p> <p>14 is there anyway to tell if, for example,</p> <p>15 these two lines combined, were placed as</p> <p>16 one order for the total number of shares</p> <p>17 or are these separate orders that were</p> <p>18 placed?</p> <p>19 A These are separate orders.</p> <p>20 Q And so if any of these trades</p> <p>21 were canceled, they would have the</p> <p>22 cancellation code next to them; is that</p> <p>23 right, which I think is CA?</p> <p>24 A That's correct.</p> <p>25 Q Okay. So now if you go up to</p>

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<p style="text-align: right;">Page 38</p> <p>1 B. Klausenger 2 the production, the Interactive 3 production folder, there is a folder 4 called Order Blotters and Trade Blotters, 5 do you see that? 6 A Yes. 7 Q Under Order Blotters, there are 8 like four spreadsheets, cancel, cancel, 9 cancel and there is a document called 10 cancel hard coded, PCP? 11 A Correct. 12 Q So if you just open, let's say, 13 open the first spreadsheet -- I guess I 14 should introduce it. The thing is, I 15 don't know about introducing a 16 spreadsheet. So maybe we can discuss it 17 without introducing it, if that's okay 18 with everybody? 19 MR. FORD: Actually, could we 20 introduce it only because I have 21 pulled up what is on the -- 22 MS. TAUBER: I can do it, but 23 it might cause complications because 24 I don't think we can stamp it because 25 it's an Excel sheet and I can't print</p>	<p style="text-align: right;">Page 40</p> <p>1 B. Klausenger 2 MR. FORD: Yes, it's up. 3 MS. TAUBER: It says, "Too 4 large to be previewed," for me. 5 MR. FORD: It wants you to 6 download it. 7 Q That separate sheet that we can 8 look at together is cancellation -- if 9 you scroll down, you can see there is 10 some AWX information in there? 11 A Uh-huh, yes, I see that. 12 Q Does this relate to -- does 13 this document relate only to Mintbroker's 14 cancellations or to any Interactive's 15 customer's cancellations? 16 A I believe this document was for 17 all cancellations in AWX. 18 Q Okay. 19 A Yeah. 20 Q So if there is no -- like how 21 would you expect -- if any of these were 22 Interactive's cancellations, how would 23 they be reflected on either the UL or US 24 trading reports, like Exhibit 18 and 25 Exhibit 19?</p>
<p style="text-align: right;">Page 39</p> <p>1 B. Klausenger 2 it to PDF in a good way, but I can 3 try to introduce it. 4 MR. FORD: I'm certainly not 5 trying to make this more difficult. 6 MS. McLAUGHLIN: We can also 7 e-mail them to you, Adam. 8 MR. FORD: Why don't we 9 introduce it and mark it and for our 10 purposes, we can just look at -- 11 MS. TAUBER: I don't think I 12 can mark it, is the problem because 13 it's an Excel document. 14 MR. FORD: You mean, because 15 you -- 16 MS. TAUBER: You can't mark a 17 PDF. 18 MR. FORD: Can't you just title 19 it the exhibit number. 20 MS. TAUBER: I'm going to try. 21 I'm going to do it like this. Hold 22 on. Okay, it does work -- unable to 23 preview or scan, hopefully it will 24 work. 25 Does everyone see it?</p>	<p style="text-align: right;">Page 41</p> <p>1 B. Klausenger 2 MR. PROVENCIO: Can I ask for 3 clarification? You said if any of 4 these were Interactive's 5 cancellations? 6 Q So there are four different 7 spreadsheets that Interactive produced, 8 that are these cancellation spreadsheets 9 in that folder. 10 We looked at the Order Blotters 11 folder? 12 A Correct. 13 Q So I'm just trying to 14 understand if any of these canceled 15 trades, were trades that we saw listed on 16 the Exhibit 18 and 19, the long account 17 and short account statements? 18 MR. PROVENCIO: So again, I 19 don't mean to interrupt, but I don't 20 recall seeing any -- 21 MS. TAUBER: Me either, that's 22 my question. 23 Q If any of the UL or US trades 24 included any of these canceled trades, 25 would they have a CA code?</p>

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<p style="text-align: right;">Page 42</p> <p>1 B. Klauseger</p> <p>2 A So any trade that was canceled,</p> <p>3 would be shown on the statement with a CA</p> <p>4 code.</p> <p>5 Q Okay. So if you don't see any</p> <p>6 CA codes on these UL and US statements,</p> <p>7 does that mean that none of those trades</p> <p>8 were canceled?</p> <p>9 A Correct.</p> <p>10 Q So I want to look at a few more</p> <p>11 documents. The cancellations, so -- back</p> <p>12 to the marked exhibits again.</p> <p>13 Okay. So do you see this</p> <p>14 document that I just marked as</p> <p>15 Exhibit 21?</p> <p>16 A Yes, I see it.</p> <p>17 Q Okay. So this is about</p> <p>18 cancellation of different stocks, not AWW</p> <p>19 or GBR, which is New Concept?</p> <p>20 A Uh-huh.</p> <p>21 Q I'm just curious about how --</p> <p>22 in this e-mail and I'm seeing that --</p> <p>23 tell me if I'm wrong, but it looks to me</p> <p>24 that Mr. Gentile had placed certain</p> <p>25 orders and then Interactive was informed</p>	<p style="text-align: right;">Page 44</p> <p>1 B. Klauseger</p> <p>2 Blotter -- let me introduce that. Okay,</p> <p>3 so Exhibit 22 now is in there and that's</p> <p>4 the Trade Blotter spreadsheet.</p> <p>5 A Okay.</p> <p>6 Q So this is all of the New</p> <p>7 Concept and Avalon trades, in general, or</p> <p>8 in -- sorry, let me rephrase that.</p> <p>9 Does this have all the AWW and</p> <p>10 GBR trades by all Interactive clients or</p> <p>11 is this specific to -- some of them say</p> <p>12 Mintbroker?</p> <p>13 A Right. So this is a Trade</p> <p>14 Blotter that represented all the trading</p> <p>15 activity in these securities, during the</p> <p>16 review period, by all customers.</p> <p>17 Q And the ones that say</p> <p>18 Mintbroker, and they have an account</p> <p>19 number on the column to the left of that?</p> <p>20 A Yes.</p> <p>21 Q So looking at the first -- I'm</p> <p>22 looking at a random row, I guess,</p> <p>23 July 24, 2018, it says account number UL</p> <p>24 1043811, account title, Mintbroker and it</p> <p>25 has a quantity of stock purchased and</p>
<p style="text-align: right;">Page 43</p> <p>1 B. Klauseger</p> <p>2 with a CBOE required those orders to be</p> <p>3 canceled?</p> <p>4 A Correct, that's my</p> <p>5 understanding.</p> <p>6 Q So how would those trades be</p> <p>7 reflected on the statement? Like, would</p> <p>8 you see those orders?</p> <p>9 A So these aren't trades, these</p> <p>10 are orders. Orders are different than</p> <p>11 trades and orders aren't represented on</p> <p>12 the statements. Only trades are</p> <p>13 represented on the statements.</p> <p>14 Q Okay. So if he placed an order</p> <p>15 and the order was not filled at all, so I</p> <p>16 know we just talked about a partially</p> <p>17 filled order, would it be reflected on</p> <p>18 the statement?</p> <p>19 A If an order was not filled at</p> <p>20 all, it would not be reflected on the</p> <p>21 statement.</p> <p>22 Q Now, going back to the folder</p> <p>23 of Order Blotters and Trade Blotters in</p> <p>24 the Interactive production.</p> <p>25 If you go into the Trade</p>	<p style="text-align: right;">Page 45</p> <p>1 B. Klauseger</p> <p>2 price and a time.</p> <p>3 So would that correspond to a</p> <p>4 row like this on the UL statement that we</p> <p>5 looked at?</p> <p>6 A If it's a partial fill, it will</p> <p>7 not because of the statement is, as I</p> <p>8 explained before, will show the aggregate</p> <p>9 and volume weighted average price.</p> <p>10 The Trade Blotter will show the</p> <p>11 individual executions that made up that</p> <p>12 aggregate transaction on the statement.</p> <p>13 Q Okay. But if I added up all of</p> <p>14 the Mintbroker buys on this Trade Blotter</p> <p>15 from one date and I took the UL statement</p> <p>16 and added up all of the same date buys of</p> <p>17 the same stock, would I get the same</p> <p>18 number?</p> <p>19 A It should be the same number.</p> <p>20 Q And the price might be a little</p> <p>21 different because one is sort of an</p> <p>22 average?</p> <p>23 A Yes, but there will be a volume</p> <p>24 weighted average price on the statement.</p> <p>25 Q On the statement. So the more</p>

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<p style="text-align: right;">Page 94</p> <p>1 B. Klauseger</p> <p>2 would essentially be liquidated out of</p> <p>3 their -- I shouldn't say liquidated, but</p> <p>4 would be bought in on the short position,</p> <p>5 it would show up as a buy transaction.</p> <p>6 Q So if the customer tried to</p> <p>7 sell and the sale failed to clear, then</p> <p>8 you would see another buy in that same</p> <p>9 amount?</p> <p>10 A Yes.</p> <p>11 Q And in terms of the price that</p> <p>12 was listed, it would be the same price</p> <p>13 as --</p> <p>14 A No, I'm not exactly sure as to</p> <p>15 what price would be, but my understanding</p> <p>16 is it would be the prevailing market</p> <p>17 price.</p> <p>18 Q So how do you tell if you see</p> <p>19 like two rows of trades and there is the</p> <p>20 same amount of shares and one is a sale,</p> <p>21 one is a buy in the short account, how do</p> <p>22 you tell if that's a fail to clear</p> <p>23 situation, with then there is another</p> <p>24 line that shows they're brought back in</p> <p>25 the account or alternatively, if it's a</p>	<p style="text-align: right;">Page 96</p> <p>1 B. Klauseger</p> <p>2 counterparty didn't have the shares,</p> <p>3 wouldn't that also fail to clear?</p> <p>4 A I'm not entirely sure.</p> <p>5 Q Okay. So what would -- do you</p> <p>6 know what happened in that situation I</p> <p>7 just described, if Mintbroker tried -- I</p> <p>8 think that is what is meant by, the</p> <p>9 second line of that affirmative defense</p> <p>10 paragraph we read, where he says in</p> <p>11 parentheses, "because the trades were</p> <p>12 short sales by market makers" --</p> <p>13 A So my belief would be that it</p> <p>14 would be subject to a liquidation, which</p> <p>15 is another code that we offer -- that's</p> <p>16 offered in the code section of the trade</p> <p>17 statement and it will be designated with</p> <p>18 an L.</p> <p>19 Q So again, if -- if in the long</p> <p>20 account, there is no L coded transaction,</p> <p>21 then there was no clearing issue?</p> <p>22 A Correct. Correct, yes, that's</p> <p>23 my understanding.</p> <p>24 Q Would there ever be a B coded</p> <p>25 transaction in the long account?</p>
<p style="text-align: right;">Page 95</p> <p>1 B. Klauseger</p> <p>2 situation where, just place a buy and a</p> <p>3 sell, the same amount of shares right</p> <p>4 away?</p> <p>5 A Right. So it would be shown as</p> <p>6 a buy-in, which is a code we have on the</p> <p>7 statements, with a column B -- sorry, a</p> <p>8 code B, that would be an automatic</p> <p>9 buy-in.</p> <p>10 Q I'm looking at the US account.</p> <p>11 I'm looking at the transaction codes.</p> <p>12 Basically if I don't see a code</p> <p>13 B anywhere, then that did not happen?</p> <p>14 A Correct.</p> <p>15 Q And then I can just assume if</p> <p>16 it's two trades in the same amount of</p> <p>17 shares, it's just two different trade</p> <p>18 orders?</p> <p>19 A Correct.</p> <p>20 Q Okay. And you said that would</p> <p>21 only be relevant to the short account,</p> <p>22 but in the long account, wouldn't that</p> <p>23 also rise in situation where if</p> <p>24 Mintbroker tried to purchase shares, but</p> <p>25 the selling party, Mintbroker's</p>	<p style="text-align: right;">Page 97</p> <p>1 B. Klauseger</p> <p>2 A I am not sure. From my</p> <p>3 experience, I have not seen -- I have not</p> <p>4 seen a long position be involved with a</p> <p>5 buy-in, as the logic just does not make</p> <p>6 sense. You wouldn't be buying in a long</p> <p>7 position. You would be liquidating the</p> <p>8 long position.</p> <p>9 Q Okay. And the same with the L,</p> <p>10 that would only be a long account code?</p> <p>11 A You can -- no, the L could be</p> <p>12 on the US side as well. If you went into</p> <p>13 a margin violation, you could be</p> <p>14 liquidated, which we would buy you back</p> <p>15 in.</p> <p>16 Q Wait, can you explain that a</p> <p>17 little more?</p> <p>18 Why would I see an L code in</p> <p>19 the US account?</p> <p>20 A The L code would be if there</p> <p>21 was a margin violation that happened in</p> <p>22 the account.</p> <p>23 Q Like, you went over the margin</p> <p>24 limit, is that what you mean?</p> <p>25 A Right. So -- yes, yes, if you</p>

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<p style="text-align: right;">Page 98</p> <p>1 B. Klauseger 2 went over the maintenance margin 3 requirement, you didn't have enough cash 4 in your account to support the 5 maintenance margin, then we would have to 6 liquidate your positions, so we could get 7 that cash value. 8 Q So that would just go with like 9 the last -- how would you determine which 10 positions to liquidate, just whatever the 11 trade -- 12 A It's an automated process that 13 I believe does randomization on it. 14 Q So is that true for the B codes 15 as well, like, is it random? 16 A No, the buy-in is specific to 17 the product because there is a failure 18 somewhere along the lines by somebody to 19 deliver the shares. So it relates to the 20 specific product. 21 The liquidation is associated 22 with the -- is a margin function really, 23 so it's trying to get the account back up 24 to above the maintenance margin 25 requirement.</p>	<p style="text-align: right;">Page 100</p> <p>1 B. Klauseger 2 any particular point in time. And if 3 everybody -- if one broker decides to 4 sell short all million shares, but 5 another broker at the time they did their 6 locate, also saw that there was a million 7 shares to be sold short, there would 8 essentially be 2 million shares to be 9 sold short. 10 And that's when the clearing 11 function happens, over the course of a 12 few days and those shares should be 13 delivered or be available as part of this 14 borrowing. But what will happen is, they 15 say no, all the shares were already 16 borrowed by broker A, therefore, you got 17 to close out your -- the other million 18 shares that were sold short by broker B 19 and it causes a buy-in. 20 Q So that correspondence we 21 looked at before, about borrowing GBR 22 shares, I forget which exhibit that was. 23 I think it was Exhibit 23? 24 A Right. 25 Q So would you -- in the short</p>
<p style="text-align: right;">Page 99</p> <p>1 B. Klauseger 2 Q Is there ever a case where you 3 have a high -- we talked initially about 4 how we're going to sell short, you have 5 to borrow the stock? 6 A Yes. 7 Q So does that mean there should 8 never be a situation where you have a 9 higher negative balance in your short 10 account, than you have a positive balance 11 in your long account because the 12 assumption is you are borrowing the 13 shares from the long account; is that 14 right? 15 A No, that's not right. When 16 you're selling short, you're selling 17 short to market, not necessarily your 18 related account. So you are looking out 19 there to the market and say, there are a 20 million shares to be shorted in this 21 security and/or to be lent to be borrowed 22 as part of the short position. 23 So there is a locate that gets 24 generated and is disseminated or is 25 available to, you know, the brokers, at</p>	<p style="text-align: right;">Page 101</p> <p>1 B. Klauseger 2 account, right, we talked about how you 3 would expect the first trade you see to 4 be a sale; right? 5 A Yes, uh-huh. 6 Q Does that mean there would be a 7 correspondence similar to that GBR borrow 8 request, for every sale in the short 9 account? 10 A There would be a -- 11 Q So would you expect that any 12 time that the short account has a 13 negative balance, that a request had 14 been -- had a negative share balance -- 15 A Uh-huh. 16 Q -- that a request was made to 17 borrow that amount of shares? 18 A Yes, in some sense of that 19 statement, yes. I mean, this is a very 20 fast and automated process as well, so I 21 wouldn't -- based on my understanding of 22 this request, is he was attempting to 23 sell short this position and they were 24 getting either rejections, saying there 25 are no shares available, I'm not exactly</p>

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<p style="text-align: right;">Page 102</p> <p>1 B. Klauseger 2 sure what the circumstances were around 3 it. So he inquired with us and said, 4 hey, is there anything available for me 5 to short. 6 Q So before he would have written 7 that correspondence, he would have tried 8 to do it some other automated way? 9 A That's my understanding of how 10 it would work. So with respect to your 11 request, it's not like everybody goes and 12 says, hey, how many shares are available 13 to be shorted at this point in time, 14 because that would just slow things down 15 significantly, in an extremely fast 16 market. 17 So there is an automated locate 18 process that happens and at this point in 19 time, there are this many shares to be 20 sold short. And if whatever reason 21 surrounding this, he was not able to sell 22 short because maybe the available short 23 positions were absorbed already by other 24 market participants, he inquired about it 25 and to see if there was any other way to</p>	<p style="text-align: right;">Page 104</p> <p>1 B. Klauseger 2 In addition to that, there is 3 also the shares lent, where you have all 4 these shares on the long side and you can 5 have those shares borrowed by other 6 purchasers or customers, et cetera. 7 So when you -- in my daily 8 course of my job, I see these sections 9 every time or frequently. And I think 10 I've confused it with just your question 11 of, are these shares being borrowed and 12 I'm looking for specific borrowed section 13 on the statements, versus just somebody 14 opening up a short position, it's just 15 going to show up in the trade section. 16 Q And there wouldn't be a 17 borrowed indication? 18 A Right. So terminology-wise, 19 it's not going to show up in a borrowed 20 section. It's just going to show up as a 21 short position. 22 Q So any time there is a sale in 23 this short account, it's on this list of 24 trades in the short account statement, 25 does that mean it was successful?</p>
<p style="text-align: right;">Page 103</p> <p>1 B. Klauseger 2 open up a short position. 3 Q Got it. But so -- I think 4 before I had said, if there is no 5 borrowing section on this statement, does 6 that mean that none of these were short 7 sales; right, you were looking at the 8 short account statement and you said that 9 all of the sales in this account are 10 short sales. 11 So then I said, why isn't there 12 a borrowing section and I thought you 13 said, it's because the shares may have 14 been taken from the long account. He 15 might have had the shares transferred 16 over from the long account. 17 Am I wrong about that? 18 A Yes, I think there is some 19 confusion there. I believe we have a 20 program where people can borrow or lend 21 shares. There is a thing called hard to 22 borrow, where you pay more money to 23 borrow these shares and that shows up in 24 this section. And there is a specific 25 list called hard to borrow.</p>	<p style="text-align: right;">Page 105</p> <p>1 B. Klauseger 2 In other words, that the shares 3 were located to be borrowed and then sold 4 short? 5 A Yes, yes. So it was -- the 6 process that was done to say that shares 7 can be sold at this point and the 8 transaction went through. 9 Q Okay. And that would 10 necessarily be the case for every sale in 11 the short account; right? 12 A Right, otherwise the 13 transaction wouldn't have happened. 14 Q Or would have been in the long 15 account? 16 A The sale of the short? 17 Q It wasn't a borrowed sale. It 18 was a regular sale, it would be in the 19 long account statement; correct? 20 A Correct, yes, correct. 21 Q And then back to the answer 22 document, Exhibit 9, just to finish that 23 up, so I think we said that any of the 24 trades failed to clear, they would have 25 either a B or L transaction code next to</p>

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<p style="text-align: right;">Page 106</p> <p>1 B. Klauseger</p> <p>2 them?</p> <p>3 A Uh-huh.</p> <p>4 Q And if it's long or short?</p> <p>5 A Yes, that's my understanding.</p> <p>6 Q And if it was -- if the failure</p> <p>7 was on the counterparty's side, like this</p> <p>8 answer on the line that's on the last</p> <p>9 page of Exhibit 9, where it says, "the</p> <p>10 trades were naked short sales made by</p> <p>11 market makers, they had not borrowed</p> <p>12 shares, if it was a purchase in the long</p> <p>13 account, but the counterparty was trying</p> <p>14 to sell short to a broker --</p> <p>15 A Uh-huh.</p> <p>16 Q -- how would that trade be</p> <p>17 reflected?</p> <p>18 Would it be reflected at all,</p> <p>19 would it then be followed with a B or an</p> <p>20 L code trade or what would you expect to</p> <p>21 see?</p> <p>22 A So this is a transaction where</p> <p>23 the counterparty failed. I believe that</p> <p>24 the customer would still maintain an</p> <p>25 opening position on the long side.</p>	<p style="text-align: right;">Page 108</p> <p>1 B. Klauseger</p> <p>2 does that money still get debited from</p> <p>3 the account, from the long account, even</p> <p>4 if the shares are not delivered?</p> <p>5 A So are you referring to a</p> <p>6 canceled trade?</p> <p>7 Q No. I mean -- well, I don't</p> <p>8 know. I guess it could be called a</p> <p>9 canceled trade because it would be the</p> <p>10 other side that's failing in this</p> <p>11 situation?</p> <p>12 A Right. If there is a canceled</p> <p>13 trade, then it would be -- there would be</p> <p>14 no accounting of profit and loss. But if</p> <p>15 there was a liquidation, there would be</p> <p>16 an accounting for profit and loss with a</p> <p>17 change in price. And if it was just a</p> <p>18 sale of the position, which is</p> <p>19 essentially similar to a liquidation,</p> <p>20 just not directed by IB, then that would</p> <p>21 be -- the difference in price would be</p> <p>22 the P/L and that would be reflected on</p> <p>23 the statements.</p> <p>24 MR. PROVENCIO: Can I just --</p> <p>25 are you talking about canceled trade</p>
<p style="text-align: right;">Page 107</p> <p>1 B. Klauseger</p> <p>2 Q So it would look just like a</p> <p>3 regular trade --</p> <p>4 A Yes, yes, it would.</p> <p>5 Q So then how does the customer</p> <p>6 then learn that they don't have the</p> <p>7 shares or what happens?</p> <p>8 A So I think it would be the</p> <p>9 obligation of the market maker to remedy</p> <p>10 the situation, but I'm not exactly sure</p> <p>11 around the exact process. If it's not on</p> <p>12 our side, I would think that the market</p> <p>13 maker on the contra side of the</p> <p>14 transaction would have to make sure that</p> <p>15 the long position was made full, you</p> <p>16 know, was made whole.</p> <p>17 Q Okay. And in terms of like the</p> <p>18 net P/L or the income that's brought in</p> <p>19 by the sale or purchase, if it's a</p> <p>20 counterparty failure, would -- let's say,</p> <p>21 it's a purchase and the counterparty</p> <p>22 fails to sell and you see a line on the</p> <p>23 long account that has a purchase and it</p> <p>24 says, you know, basis or whatever the</p> <p>25 price was that it paid for the shares,</p>	<p style="text-align: right;">Page 109</p> <p>1 B. Klauseger</p> <p>2 as executed then canceled or are you</p> <p>3 talking about canceled order? Is the</p> <p>4 question about canceled trade or</p> <p>5 canceled order?</p> <p>6 MS. TAUBER: I'm actually</p> <p>7 asking about, like there is no</p> <p>8 cancellation at all from the</p> <p>9 customer's end, it's more that the</p> <p>10 customer wants to make the trade, it</p> <p>11 never wants to cancel it, but the</p> <p>12 other side doesn't have the stock to</p> <p>13 sell. Mintbroker buys 100 shares and</p> <p>14 that costs him \$100, let's say.</p> <p>15 A In that sense, we wouldn't see</p> <p>16 the other piece outside of the customer</p> <p>17 transaction, if the market maker that has</p> <p>18 to be on the opposite side of the failed,</p> <p>19 it should not effect or it would not be</p> <p>20 displayed or really I do not believe it</p> <p>21 should effect the customer still.</p> <p>22 Q But is the customer still</p> <p>23 debiting that \$100, it would be taken out</p> <p>24 of the customer's account to pay for the</p> <p>25 sell?</p>

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<p style="text-align: right;">Page 142</p> <p>1 B. Klauseger</p> <p>2 the account documents how the voting</p> <p>3 rights were to be exercised. If you</p> <p>4 want to vote the shares, tell us by a</p> <p>5 certain date. I'm thinking</p> <p>6 boilerplate language, that exists in</p> <p>7 an account opening document.</p> <p>8 MR. PROVENCIO: You would have</p> <p>9 gotten all the disclosures and</p> <p>10 account agreement itself that would</p> <p>11 discuss voting, if there was any sort</p> <p>12 of disclosure that we make.</p> <p>13 And to the extent there is a</p> <p>14 proxy, the only way I think</p> <p>15 Interactive Broker gets the proxy, is</p> <p>16 because we are custodian. But we</p> <p>17 then distribute all that or direct</p> <p>18 people through sort of communication,</p> <p>19 that they have a proxy rights or</p> <p>20 whatever.</p> <p>21 But we don't make up the proxy</p> <p>22 rights and we don't have some sort of</p> <p>23 additional disclosure agreement and</p> <p>24 that's our disclosure obligation.</p> <p>25 We're not the ones making the</p>	<p style="text-align: right;">Page 144</p> <p>1 B. Klauseger</p> <p>2 THE WITNESS: Right, as I</p> <p>3 stated before, I'm not -- that might</p> <p>4 be a corporate asset function and I'm</p> <p>5 not sure how to answer that question.</p> <p>6 MS. TAUBER: Maybe I'll just</p> <p>7 send up a follow-up request, if I</p> <p>8 think it's necessary.</p> <p>9 MR. PROVENCIO: Okay.</p> <p>10 MR. FORD: Is that it for you?</p> <p>11 MS. TAUBER: Yes.</p> <p>12 MR. FORD: Thank you.</p> <p>13 EXAMINATION BY</p> <p>14 MR. FORD:</p> <p>15 Q My name is Adam Ford. I'm with</p> <p>16 my colleague, Danielle McLaughlin and we</p> <p>17 represent Guy Gentile in this matter.</p> <p>18 In addition to sort of the</p> <p>19 standard sort of questioning rules, I'm</p> <p>20 going to be asking you some questions</p> <p>21 today and obviously at any point time you</p> <p>22 don't understand question, tell me. But</p> <p>23 I'm not certain what the extent of your</p> <p>24 knowledge is, so I may ask you a question</p> <p>25 that's beyond your sort of competency for</p>
<p style="text-align: right;">Page 143</p> <p>1 B. Klauseger</p> <p>2 disclosure, it's the issuer.</p> <p>3 MS. TAUBER: Okay. So if there</p> <p>4 is no policy, I see the documents, I</p> <p>5 can assume like standard voting rules</p> <p>6 apply to the shares. There is no</p> <p>7 other agreement that the customer</p> <p>8 signs about voting.</p> <p>9 MR. FORD: Objection. I think</p> <p>10 you are just saying something.</p> <p>11 MS. TAUBER: Because before we</p> <p>12 talked how the customers have the</p> <p>13 right to vote the shares in their</p> <p>14 long account, but in the short</p> <p>15 account, they don't. So I was</p> <p>16 wondering if transfer of the shares</p> <p>17 from the long to short account, also</p> <p>18 transfers the voting rights</p> <p>19 associated with those shares.</p> <p>20 MR. FORD: I don't know if the</p> <p>21 witness can be able testify to those</p> <p>22 questions. If the witness is, then I</p> <p>23 stand corrected. But it sounds to me</p> <p>24 like the witness has said he's not</p> <p>25 able to testify to that.</p>	<p style="text-align: right;">Page 145</p> <p>1 B. Klauseger</p> <p>2 your job that you're here for. I'm not</p> <p>3 asking you to guess or stretch. So let</p> <p>4 me know and don't be afraid to tell me if</p> <p>5 it's beyond what your knowledge base is.</p> <p>6 A Okay.</p> <p>7 Q So I just want to focus on the</p> <p>8 issue we just raised and what you</p> <p>9 testified about this morning, this</p> <p>10 question of locating shorts and how</p> <p>11 counterparties, what their</p> <p>12 responsibilities are, that's sort of the</p> <p>13 general topic.</p> <p>14 First, to be clear, with</p> <p>15 respect to Mint Traders, their trades in</p> <p>16 AWX and GBR, that we have been talking</p> <p>17 about, Interactive Brokers is not taking</p> <p>18 the opposite side of any of those trades;</p> <p>19 right, you're not covering or taking a</p> <p>20 position of those trades; correct?</p> <p>21 A Yeah, we don't, as a propriety</p> <p>22 firm, just propriety basis, it's not us,</p> <p>23 we do not.</p> <p>24 Q So when Mintbroker sends a</p> <p>25 trade order for 100 shares of AWX, they</p>

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<p style="text-align: right;">Page 146</p> <p>1 B. Klauseger 2 want to buy? 3 A Uh-huh. 4 Q Could you explain to me what 5 Interactive broker does with that order? 6 A Yeah. So customer will submit 7 their order through the trader 8 workstation system and we'll route it to 9 the exchanges, fast activation basis, via 10 Smart Routing System and they will get -- 11 they will analyze the market, find the 12 best exchange and route the order to that 13 exchange for execution. 14 Q When you say exchange, just so 15 I'm clear, are you talking about sending 16 it to, like to a sort of New York Stock 17 Exchange, an actual sort of exchange? 18 A Yes, some type of Stock 19 Exchange. 20 Q So is that -- don't they also 21 sometimes go to another broker dealer -- 22 A They can go to -- well, the 23 broker dealer can be on the counterparty, 24 if directed as a market commissioner. If 25 that's what your question is.</p>	<p style="text-align: right;">Page 148</p> <p>1 B. Klauseger 2 customer, we would have that information 3 and, therefore, we would know the 4 counterparty to that trade. 5 Q So if that's the case, with 6 respect to a counterparty that's not an 7 IB customer, so it's outside the IB 8 system, do you have any idea whether that 9 party actually owns any of the shares 10 that they're agreeing to sell? I'll stop 11 there. 12 Do you know if that 13 counterparty owns the actual shares to 14 sell to fill -- 15 A No, since we're not privy to 16 their account information, we do not know 17 if they own or what the position is prior 18 to the transaction. 19 Q With respect to also -- this 20 question is also about outside IB, non-IB 21 customers, do you have any idea whether 22 those parties have actually located any 23 shares before agreeing to take the other 24 side of the order, before agreeing to 25 sell them to fill that order?</p>
<p style="text-align: right;">Page 147</p> <p>1 B. Klauseger 2 Q Yeah, I think it might be. For 3 example, when we see on the list that 4 some of the AWX orders are sent to Arca, 5 Arca is not an exchange; correct, or is 6 Arca an exchange? 7 A I'm not sure if it's exchange 8 or an ECM. I do not believe it's a dark 9 hole. 10 Q But the counterparty, so there 11 is a counterparty to each of the orders; 12 correct? 13 A Uh-huh, yes. 14 Q And do you or does IB have any 15 idea who those counterparties are, who 16 the counterparty is to the order? 17 A The only time they would 18 ever -- the answer to your question is 19 yes and no, it depends. 20 Q Okay. 21 A If the trade is executed 22 against a non-IB customer, then no, we 23 would not know the counterparty to that 24 trade. 25 If it's executed against an IB</p>	<p style="text-align: right;">Page 149</p> <p>1 B. Klauseger 2 A No, we don't know. 3 Q Now, with respect to the IB 4 customers, is it the case that you do 5 know whether that counterparty would 6 actually have those shares in its 7 possession, to fill the order? 8 A Well, we would do -- assuming 9 they're making a short sale and they're 10 not closing out a long position? 11 Q I'll ask about either. 12 A Okay. So if they are closing 13 out a long position, we -- obviously we 14 don't have to do a locate of the short 15 shares. But as part of our process for 16 opening short positions is to query the 17 short share or, you know, shares 18 available to be shorted, position for 19 pots. 20 Q Now, can we tell from the IB 21 documents that you've produced, which of 22 the Mintbroker orders for the purchase of 23 AWX and New Concept, GBR, whether which 24 of those orders were filled with IB 25 customer accounts?</p>

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<p style="text-align: right;">Page 150</p> <p>1 B. Klauseger</p> <p>2 A That information is not readily</p> <p>3 available. It would have to be analyzed</p> <p>4 on a broader basis. Based on the</p> <p>5 statements, no, it's not -- I'm not able</p> <p>6 to tell if any of the trades were against</p> <p>7 another IB customer.</p> <p>8 Q So now with respect to the IB</p> <p>9 customer, now you said if an IB customer</p> <p>10 wants to short a position, short an AWP</p> <p>11 share, that under IB rules, internal</p> <p>12 rules, you would require that person --</p> <p>13 you would require -- who does the locate,</p> <p>14 the customer or IB?</p> <p>15 A I believe IB would do it as</p> <p>16 part of a system process. And I'm not</p> <p>17 sure exactly how that all works because</p> <p>18 it's likely automated.</p> <p>19 Q IB, now you talked about this</p> <p>20 shares available to short pot?</p> <p>21 A Yes.</p> <p>22 Q What exactly is that? Is that</p> <p>23 sort of one -- I'll stop, could you</p> <p>24 explain what that is?</p> <p>25 A It's just my understanding on a</p>	<p style="text-align: right;">Page 152</p> <p>1 B. Klauseger</p> <p>2 you could have six broker dealers look at</p> <p>3 these million shares and say, okay, I</p> <p>4 can, you know, I got a million shares</p> <p>5 that my customers can short --</p> <p>6 A Uh-huh.</p> <p>7 Q -- and if all six of them do</p> <p>8 that, there is 1 million actual shares in</p> <p>9 existence and yet there would be 6</p> <p>10 million shorts of that share; is that</p> <p>11 correct?</p> <p>12 A That is my understanding, yes.</p> <p>13 Q And in fact, with respect to</p> <p>14 AWP and you'll tell me if you know or you</p> <p>15 don't know, the number of shares that</p> <p>16 were being shorted, was far in excess of</p> <p>17 the amount of shares that were available</p> <p>18 on the market, do you know that one way</p> <p>19 or the other?</p> <p>20 A I don't know the answer to</p> <p>21 that.</p> <p>22 Q That's fine, but with -- but</p> <p>23 you certainly -- you understand that it's</p> <p>24 possible for there to be more shorts than</p> <p>25 there are actual shares; correct?</p>
<p style="text-align: right;">Page 151</p> <p>1 B. Klauseger</p> <p>2 very basic level, that this locate, this</p> <p>3 process gets done, we identify and I'm</p> <p>4 not sure exactly how it works, you know,</p> <p>5 the intricacies of it, but we identify</p> <p>6 there is this pot of shares available to</p> <p>7 be shorted in the market and you can</p> <p>8 essentially allow your customers to make</p> <p>9 those short sales, based on the knowledge</p> <p>10 of that, the size of that pot of shares.</p> <p>11 Q Do you know whether when shares</p> <p>12 are actually shorted, right, from -- are</p> <p>13 sort of located from the shares available</p> <p>14 to share pot -- short pot, do all of the</p> <p>15 other broker dealers, you know, are they</p> <p>16 notified that the number of shares has</p> <p>17 now been reduced by the number of shorts</p> <p>18 that have gone out?</p> <p>19 A So, no, my understanding is</p> <p>20 that it's not a reduced number of shares</p> <p>21 to be shorted.</p> <p>22 Q And this goes to what you had</p> <p>23 testified earlier today, which is to say,</p> <p>24 that if this is just an example, if there</p> <p>25 is a million shares in this pot, right,</p>	<p style="text-align: right;">Page 153</p> <p>1 B. Klauseger</p> <p>2 A Correct, which is, hence, the</p> <p>3 fail to delivers.</p> <p>4 Q Right. And this is not just a</p> <p>5 theoretical possibility, but is it fair</p> <p>6 to say, that this happens on occasion or</p> <p>7 with some frequency?</p> <p>8 A I would say it happens on --</p> <p>9 yes, I would say that's accurate, on</p> <p>10 occasion or with some frequency.</p> <p>11 Q And so we know that -- we'll go</p> <p>12 back to the example of the 1 million</p> <p>13 shares that are available to be shorted</p> <p>14 and there are 6 million shorts, it's true</p> <p>15 that a trade -- I'll period that and</p> <p>16 start a separate question.</p> <p>17 It's true that when someone</p> <p>18 puts in an order for a trade, that fills,</p> <p>19 that these trades are on T minus three,</p> <p>20 meaning --</p> <p>21 A Yes.</p> <p>22 Q -- the counterparty would have</p> <p>23 three days to come up with the share; is</p> <p>24 that correct, with the actual share; is</p> <p>25 that correct, to deliver?</p>

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<p style="text-align: right;">Page 154</p> <p>1 B. Klauseger</p> <p>2 A Yeah, I think T minus three. I</p> <p>3 believe there was an update to T minus</p> <p>4 two though.</p> <p>5 Q Okay, so two minus two.</p> <p>6 A At the time the trades</p> <p>7 happened, I believe it was T minus three.</p> <p>8 Q I think it was.</p> <p>9 A T plus three, not minus three.</p> <p>10 Q T plus, yes, you have the three</p> <p>11 days.</p> <p>12 Now, you had testified that if</p> <p>13 you have a situation where a customer has</p> <p>14 purchased shares, put in -- not purchased</p> <p>15 shares, put in an order to be filled,</p> <p>16 right, Interactive Broker agrees to fill</p> <p>17 that order when there is a counterparty</p> <p>18 that has agreed to take the other side of</p> <p>19 that order; is that correct? Does that</p> <p>20 make sense?</p> <p>21 A It's not -- I mean, we reroute</p> <p>22 it to the exchange to get filled.</p> <p>23 Q So a customer puts in their</p> <p>24 order and Interactive Broker routes it to</p> <p>25 the exchange and then it's filled on the</p>	<p style="text-align: right;">Page 156</p> <p>1 B. Klauseger</p> <p>2 day after, T plus four.</p> <p>3 Q Now, what does that mean,</p> <p>4 bought in?</p> <p>5 A So that would mean that we</p> <p>6 essentially -- IB is obligated to close</p> <p>7 out that short sale position that can't</p> <p>8 be as failed to deliver and so what we do</p> <p>9 is, we acquire the long position, to</p> <p>10 close out against the short position.</p> <p>11 Q But -- and you would do that,</p> <p>12 without regard to the possession of any</p> <p>13 shares; is that correct?</p> <p>14 A Can you say that again, what do</p> <p>15 you mean by that?</p> <p>16 Q Absolutely, sorry about that.</p> <p>17 What I'm saying, if you have -- if the</p> <p>18 counterparty just doesn't have the</p> <p>19 shares, they're not in their position and</p> <p>20 they don't exist, they don't exist to the</p> <p>21 extent that you got 1 million actual</p> <p>22 shares and 6 million and people -- you</p> <p>23 have six people, each who sold short a</p> <p>24 million shares, there are only a million</p> <p>25 shares; right?</p>
<p style="text-align: right;">Page 155</p> <p>1 B. Klauseger</p> <p>2 exchange?</p> <p>3 A Uh-huh.</p> <p>4 Q And it's filled by a</p> <p>5 counterparty?</p> <p>6 A Correct.</p> <p>7 Q And as you testified before, if</p> <p>8 it's outside IB, you don't know whether</p> <p>9 that counterparty actually owns the share</p> <p>10 or not; is that correct?</p> <p>11 A Correct.</p> <p>12 Q Now, if what we just talked</p> <p>13 about, that happens occasionally or with</p> <p>14 some frequency, that there are more</p> <p>15 shares that have been shorted than actual</p> <p>16 shares in existence, if the trade -- if</p> <p>17 the order gets to that T plus three and</p> <p>18 the counterparty does not have the share,</p> <p>19 you testified that -- let me just ask,</p> <p>20 can you explain to me again what happens</p> <p>21 if the counterparty simply does not have</p> <p>22 the share and cannot locate it?</p> <p>23 A On the short sale side, they</p> <p>24 are bought in. It's called a buy-in.</p> <p>25 They are bought in, I believe it's the</p>	<p style="text-align: right;">Page 157</p> <p>1 B. Klauseger</p> <p>2 A Uh-huh.</p> <p>3 Q That means with respect to 5</p> <p>4 million of those sort of shares or short</p> <p>5 sales, there just are not shares to</p> <p>6 deliver; right?</p> <p>7 A Yes.</p> <p>8 Q So when IB closes that position</p> <p>9 out, it's not because they have a million</p> <p>10 shares, they're just making -- is it a</p> <p>11 fair statement that they're just making a</p> <p>12 book entry, in terms of the value of what</p> <p>13 the share would be?</p> <p>14 A Just a book entry?</p> <p>15 Q You can use your words, but I'm</p> <p>16 trying to get at the point that you're at</p> <p>17 that point, you're not dealing with the</p> <p>18 actual shares, you're dealing with just a</p> <p>19 proxy for the shares?</p> <p>20 A So, right, when we do a buy-in</p> <p>21 because the short sale is going to be</p> <p>22 closed out, how do we do that, yes, it's</p> <p>23 a book entry accounting function, but</p> <p>24 there are shares that need to be bought</p> <p>25 back in, which is part of the buy-in</p>

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<p style="text-align: right;">Page 158</p> <p>1 B. Klauseger</p> <p>2 process and needs to be done, I believe</p> <p>3 on the following trade date, after the T</p> <p>4 plus three, after the fail to deliver</p> <p>5 happens. And that's how we determine a</p> <p>6 price at which those buy-ins happen at.</p> <p>7 Q I'm not certain I understood</p> <p>8 that. You didn't just -- did you just</p> <p>9 say that there are -- that there are</p> <p>10 actual shares that need to be purchased?</p> <p>11 A If 5 million are sold short and</p> <p>12 there is a fail to deliver, there needs</p> <p>13 to be shares to be bought back in to</p> <p>14 close out that 5 million shares. There</p> <p>15 should be 5 million shares available on</p> <p>16 the following day, because the clearing</p> <p>17 process.</p> <p>18 Q If the shares available to</p> <p>19 short pot, only ever had 1 million actual</p> <p>20 shares in it --</p> <p>21 A Right, but that changes every</p> <p>22 day, I guess is what needs to be --</p> <p>23 Q Okay. Let's pull this right to</p> <p>24 AWX.</p> <p>25 A Okay.</p>	<p style="text-align: right;">Page 160</p> <p>1 B. Klauseger</p> <p>2 interject here. I appreciate that</p> <p>3 you are trying to give an express</p> <p>4 example, but I think the</p> <p>5 simplification of it is obscuring the</p> <p>6 issue that Brad testified, that</p> <p>7 parties can put up shares to be lent</p> <p>8 out. So not every share, you know,</p> <p>9 that is not held by -- every share</p> <p>10 that is sort of on the open market,</p> <p>11 is necessarily a share that can be</p> <p>12 lent out.</p> <p>13 B, you're talking about things</p> <p>14 in sort of a vacuum, where every</p> <p>15 order goes in, whether it's a long or</p> <p>16 a short, at a price. And so there</p> <p>17 might only -- when you look on the --</p> <p>18 look in the pot, the system, I can't</p> <p>19 remember what it's called, when you</p> <p>20 look in there to see how many shares</p> <p>21 are available to be borrowed, it's at</p> <p>22 a given price. I don't mean to</p> <p>23 testify.</p> <p>24 MR. FORD: Please, it's okay.</p> <p>25 MR. PROVENCIO: I want to</p>
<p style="text-align: right;">Page 159</p> <p>1 B. Klauseger</p> <p>2 Q And in relatively rough</p> <p>3 numbers, AWX had a total of 3 million</p> <p>4 shares that were available to be traded?</p> <p>5 A Yes.</p> <p>6 Q Okay?</p> <p>7 A Okay.</p> <p>8 Q At one point, Mintbroker owned</p> <p>9 1.9 million or put in, I'm sorry,</p> <p>10 Mintbroker placed orders to purchase</p> <p>11 1.9 million of those shares; okay?</p> <p>12 A Okay.</p> <p>13 Q The total trade volume on, I</p> <p>14 think it was July 5th, was 12 million</p> <p>15 shares.</p> <p>16 A Okay.</p> <p>17 Q I'm making these</p> <p>18 representations to you in rough numbers.</p> <p>19 That would mean that, if I'm</p> <p>20 correct on my math, that would mean that</p> <p>21 there were -- that effectively 1 million</p> <p>22 shares were being used as sort of -- were</p> <p>23 in the pot, right, to buy and sell 12</p> <p>24 million shares, did I do that right?</p> <p>25 MR. PROVENCIO: Let me</p>	<p style="text-align: right;">Page 161</p> <p>1 B. Klauseger</p> <p>2 clarify, so the question will be more</p> <p>3 precise. When I put in a price -- I</p> <p>4 want to borrow shares at 100 because</p> <p>5 I think it's going to go down from</p> <p>6 100, I don't necessarily want to</p> <p>7 borrow shares at some lower or higher</p> <p>8 price, so there might only be 100 or</p> <p>9 10 shares at that level; right?</p> <p>10 When there is a buy-in then,</p> <p>11 there is a failure to deliver, there</p> <p>12 was a buy-in, you were buying in at</p> <p>13 whatever price there is; right? And</p> <p>14 that's where the distinction is.</p> <p>15 It's not that all of a sudden</p> <p>16 miraculously these shares are</p> <p>17 available. It's that there are</p> <p>18 shares available, but just at a</p> <p>19 crappy price.</p> <p>20 MR. FORD: I actually do</p> <p>21 appreciate that and Carlos, I'm just</p> <p>22 going to direct the question back to</p> <p>23 Brad, but if you feel you need to</p> <p>24 jump in again, please do.</p> <p>25 Q I guess what I'm trying to get</p>

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<p style="text-align: right;">Page 162</p> <p>1 B. Klausenger</p> <p>2 at because with what I understand, Brad,</p> <p>3 tell me if I'm correct, what I understand</p> <p>4 what Carlos just explained, is that there</p> <p>5 is the amount of shares in the float,</p> <p>6 right, does not necessarily equal the</p> <p>7 amount of shares available to short; is</p> <p>8 that correct?</p> <p>9 A That's correct, yes.</p> <p>10 Q And in fact what that means,</p> <p>11 the shares available to short, is</p> <p>12 necessarily less than, in those cases</p> <p>13 would be less than the shares in the</p> <p>14 float?</p> <p>15 A Yes.</p> <p>16 Q But to go back to our example,</p> <p>17 where if you have 5 million shares</p> <p>18 shorted --</p> <p>19 A Uh-huh.</p> <p>20 Q -- across brokers, but there</p> <p>21 are only actually 1 million shares, not</p> <p>22 all of those shares can be obtained and</p> <p>23 can be available for delivery, only 1</p> <p>24 million of them can be --</p> <p>25 A That's correct, yes.</p>	<p style="text-align: right;">Page 164</p> <p>1 B. Klausenger</p> <p>2 contribute to the decision to close the</p> <p>3 account?</p> <p>4 A I can't recall if that was</p> <p>5 identified in the compliance review or</p> <p>6 not. It may have, but it -- I'm not</p> <p>7 certain one way or the other if it was</p> <p>8 identified.</p> <p>9 Q Would that be -- would that</p> <p>10 information be identified in the</p> <p>11 compliance review?</p> <p>12 A Whether or not it was --</p> <p>13 whether or not this complaint was part of</p> <p>14 that, yes, it would be identified. It</p> <p>15 would likely be identified if it was part</p> <p>16 of the reason, yes.</p> <p>17 MR. FORD: I think I just need</p> <p>18 two minutes for Danielle and I to</p> <p>19 discuss off line and then we're</p> <p>20 likely done, but for maybe a couple</p> <p>21 of follow-up questions.</p> <p>22 [At this time, a short recess</p> <p>23 was taken.]</p> <p>24 MR. FORD: I did hear you at</p> <p>25 the end, that you had some follow-up.</p>
<p style="text-align: right;">Page 163</p> <p>1 B. Klausenger</p> <p>2 Q I think that might be it on</p> <p>3 that point. Let me switch topics.</p> <p>4 You had testified earlier with</p> <p>5 respect to why Mr. -- why the Mintbroker</p> <p>6 international account was closed?</p> <p>7 A Uh-huh.</p> <p>8 Q You had said there was another</p> <p>9 compliance review?</p> <p>10 A Yes.</p> <p>11 Q Was that compliance review</p> <p>12 initiated by any complaint, either</p> <p>13 customer or outside party complaint?</p> <p>14 A I don't recall.</p> <p>15 Q And you had mentioned that the</p> <p>16 determination to close the account, was</p> <p>17 based on public domain information.</p> <p>18 Do you know what public domain</p> <p>19 information was --</p> <p>20 A Yes, from what I remember,</p> <p>21 there was allegations out there that he</p> <p>22 was being investigated by federal</p> <p>23 agencies.</p> <p>24 Q Was the complaint filed in</p> <p>25 these cases, part of that review and</p>	<p style="text-align: right;">Page 165</p> <p>1 B. Klausenger</p> <p>2 I have a couple more questions, then</p> <p>3 you can ask your follow-up.</p> <p>4 BY MR. FORD:</p> <p>5 Q Very quickly, to go back to</p> <p>6 sort of basics on orders and what happens</p> <p>7 once an order is placed and filled.</p> <p>8 The concept with the T plus</p> <p>9 three, am I correct that that means that</p> <p>10 when Mintbroker places an order for AWX</p> <p>11 shares to purchase, when that order is</p> <p>12 filled, at that time, the shares of AWX</p> <p>13 are not transferred to Mintbroker</p> <p>14 immediately upon the filling of that</p> <p>15 order; is that correct?</p> <p>16 A So the account will show that</p> <p>17 it purchased the shares as of that date,</p> <p>18 but it will be accounting behind it</p> <p>19 declaring settlement of the position and,</p> <p>20 you know, the funds behind the position</p> <p>21 and transference of the shares, that</p> <p>22 happens on the T plus three.</p> <p>23 Q So is it fair then to say that</p> <p>24 if Mintbroker places an order for 100</p> <p>25 shares of AWX on day one and then sells</p>

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<p style="text-align: right;">Page 166</p> <p>1 B. Klauseger</p> <p>2 100 shares of AWX on day two, that at no</p> <p>3 point did any actual shares come into</p> <p>4 Mintbroker's possession?</p> <p>5 A No, that's incorrect.</p> <p>6 Q I thought you just testified</p> <p>7 that the shares do not come into -- the</p> <p>8 shares will not transfer until the T plus</p> <p>9 three?</p> <p>10 A That's an accounting function</p> <p>11 essentially, but on day two, it's T plus</p> <p>12 three, so you're closing the position one</p> <p>13 day after -- the accounting piece of it</p> <p>14 happens one day after as well. So I'm</p> <p>15 trying to think of the best way to put</p> <p>16 this.</p> <p>17 So if you buy the shares, you</p> <p>18 sell -- you buy the shares on day one and</p> <p>19 sell the shares on the day two, they're</p> <p>20 going to clear on Thursday, the sell is</p> <p>21 going to clear on Friday.</p> <p>22 Q I'm not sure I understood that.</p> <p>23 I understood that the transfer of the</p> <p>24 shares takes place on T plus three?</p> <p>25 A So I guess it's -- it's the</p>	<p style="text-align: right;">Page 168</p> <p>1 B. Klauseger</p> <p>2 A Because of the clearing aspect,</p> <p>3 yes.</p> <p>4 Q And -- right, because the</p> <p>5 shares don't actually -- by the clearing</p> <p>6 aspect of it, you mean because the shares</p> <p>7 do not actually clear until T plus three?</p> <p>8 A Yes, yeah.</p> <p>9 MR. FORD: Danielle, do we have</p> <p>10 anything further?</p> <p>11 MS. McLAUGHLIN: No, I don't</p> <p>12 believe so.</p> <p>13 MR. FORD: Okay, I think that's</p> <p>14 all that we have, unless there is</p> <p>15 something on redirect. Thank you.</p> <p>16 MS. TAUBER: I have one</p> <p>17 question about that and unfortunately</p> <p>18 it goes back to the voting again.</p> <p>19 FURTHER EXAMINATION BY</p> <p>20 MS. TAUBER:</p> <p>21 Q In the example that Adam just</p> <p>22 gave of, you buy the shares on day one</p> <p>23 and the order is filled, on day two,</p> <p>24 before the clearing process is complete,</p> <p>25 can the customer vote the stock, do you</p>
<p style="text-align: right;">Page 167</p> <p>1 B. Klauseger</p> <p>2 clearing function of the -- on T plus --</p> <p>3 on the trade date, you make the trade and</p> <p>4 on that, you are taking possession of</p> <p>5 those shares, but there is a clearing</p> <p>6 function, clearing settlement function,</p> <p>7 that acts as an accounting function that</p> <p>8 happens on T plus three.</p> <p>9 Q But if that is -- if that's the</p> <p>10 case, then when we go back to our prior</p> <p>11 example of there being --</p> <p>12 A I also want to be clear,</p> <p>13 it's -- I mean, I guess it's coming down</p> <p>14 to technicality of the sole process and</p> <p>15 I'm trying to clarify my description of</p> <p>16 it.</p> <p>17 Q Maybe I can help you, not to</p> <p>18 cut you off, but maybe I can ask it this</p> <p>19 way: When a customer places an order to</p> <p>20 be filled for shares in IB --</p> <p>21 A Uh-huh.</p> <p>22 Q -- at the moment that that</p> <p>23 order is filled, isn't it fair to say</p> <p>24 that IB has not placed any shares into</p> <p>25 that customer's account?</p>	<p style="text-align: right;">Page 169</p> <p>1 B. Klauseger</p> <p>2 know?</p> <p>3 Do you know if they have the</p> <p>4 record, if they are the record owner?</p> <p>5 MR. PROVENCIO: Let me just</p> <p>6 interject that to the extent that</p> <p>7 that is asking for a legal</p> <p>8 conclusion, Brad is not a lawyer and</p> <p>9 as a lawyer, I'm not sure I know the</p> <p>10 answer, but let's see what he knows.</p> <p>11 MR. FORD: I would second that</p> <p>12 objection. That's right.</p> <p>13 A I don't. I can't answer that</p> <p>14 with a certainty.</p> <p>15 Q I thought you had mentioned</p> <p>16 before something about assigning the</p> <p>17 shares, when we discussed that about the</p> <p>18 assignment, if the shares are assigned to</p> <p>19 the account, in a situation where, for</p> <p>20 example, the person sells short, hasn't</p> <p>21 been found --</p> <p>22 A Are you talking about the</p> <p>23 buy-in?</p> <p>24 Q Yeah, I think so. And I think</p> <p>25 you had mentioned that the voting would</p>

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<p style="text-align: right;">Page 170</p> <p>1 B. Klausenger 2 get sorted out with the assignment 3 somehow, maybe that was separate from the 4 clearing process, but I don't know if 5 that was in the clearing process? 6 A I think that had to do with the 7 transfer, the transfer positions; is that 8 right? 9 Q Yeah, sure. I'm not sure if 10 that's the context in which we discussed 11 this, but -- 12 A So I just want to make sure 13 that I'm referencing the right question 14 that you discussed previously. 15 So you said the assignment, I'm 16 trying to determine what you mean by 17 that. 18 Q Remember I had asked you, has 19 it ever happened before that a customer 20 has tried to vote shares before they were 21 actually assigned to their account? 22 A Right, and I said I could not 23 answer that question because I was 24 uncertain about it. And I think I would 25 have to discuss it with Corporate Actions</p>	<p style="text-align: right;">Page 172</p> <p>1 2 A C K N O W L E D G M E N T 3 STATE OF NEW YORK) 4)ss: 5 COUNTY OF) 6 7 I, BRAD KLAUSEGER, hereby certify that 8 I have read the foregoing record of my 9 testimony taken at the time and place 10 noted in the heading hereof and I do 11 hereby acknowledge it to be a true and 12 correct transcript of same. 13 14 _____ 15 BRAD KLAUSEGER 16 17 Subscribed and sworn to before me 18 this day of , 20__. 19 20 21 NOTARY PUBLIC 22 23 24 25</p>
<p style="text-align: right;">Page 171</p> <p>1 B. Klausenger 2 Department, to see if they have voting 3 rights at that time. 4 Q Would that department also know 5 if they had voting rights on this day two 6 period, between order fulfilment and 7 clearing? 8 A They may. 9 MS. TAUBER: I have nothing 10 further. Thank you. 11 MR. FORD: Danielle, anything 12 further? 13 MS. McLAUGHLIN: Nothing 14 further. 15 MR. FORD: We're good. Thank 16 you, Brad and Carlos and Jennifer, 17 most importantly. Thank you, Miriam. 18 THE COURT REPORTER: Do you 19 want a copy of this transcript? 20 MS. McLAUGHLIN: Yes, please. 21 (Time noted: 3:21 p.m.) 22 23 24 25</p>	<p style="text-align: right;">Page 173</p> <p>1 2 EXAMINATION BY PAGE 3 MS. TAUBER 5 4 168 5 MR. FORD 144 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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